

Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item

SUBJECT: FY 2023 Laboratory Accreditation Program Fee Adjustment

FOR: April 2022 Board meeting

TO BE PRESENTED BY: Steve Geis, Certification Services Section Chief

SUMMARY:

The Laboratory Accreditation Program ensures the quality and defensibility of environmental laboratory data. Laboratories submitting data to the department must be certified or registered under ch. NR 149 Wis. Adm. Code, to perform the tests to generate such data. Section 299.11 (9), Wis. Stats., authorizes the department to promulgate a graduated schedule of fees to recover the costs of administering the Laboratory Accreditation Program. Fees are determined using the formula in s. NR 149.21 (1) (c). The formula determines the program's fee schedule for each fiscal year and is tied to the number of laboratories participating in the program, and the program's expenditure authority determined under s. 20.370 (9) (fj), Wis. Stats. Laboratories participating in the program must pay renewal fees in full to maintain their certifications and registrations.

Under the guidance of the Certification Standards Review Council, a 9-member advisory board, the Laboratory Accreditation Program is a lean and efficient program, operating under its authorized spending authority while maintaining a high level of service to its customers. Section NR 149.21(1), Wis Admin Code, authorizes the department to adjust annual fees to generate revenues equal to the cost of administering the program, and requires proposed fee adjustments to be reviewed by the Certification Standards Review Council and approved by the Natural Resources Board. The department is proposing a fee decrease of 0.7% to fully fund projected FY 23 employee salaries and program operating expenses.

The proposed fee decrease means that an average municipal lab will pay \$8 less for accreditation. The average commercial lab will pay \$38 less for accreditation. The Certification Standards Review Council, representing a cross section of environmental laboratories, supports the proposed budget plan for FY23.

RECOMMENDATION: The department recommends that the Natural Resources Board approve the Laboratory Accreditation program's FY 2023 fee adjustment proposal.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- Background memo
Fiscal Estimate
Resolution from the Certification and Standards Review Council

Table with 3 columns: Approved by, Signature, Date. Rows include Greg Pils, Dave Siebert, and Preston D. Cole, Secretary.

cc: Board Liaison - AD/8 [Signature]

by Sarah Barry

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CORRESPONDENCE/MEMORANDUM

DATE: March 7, 2022

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

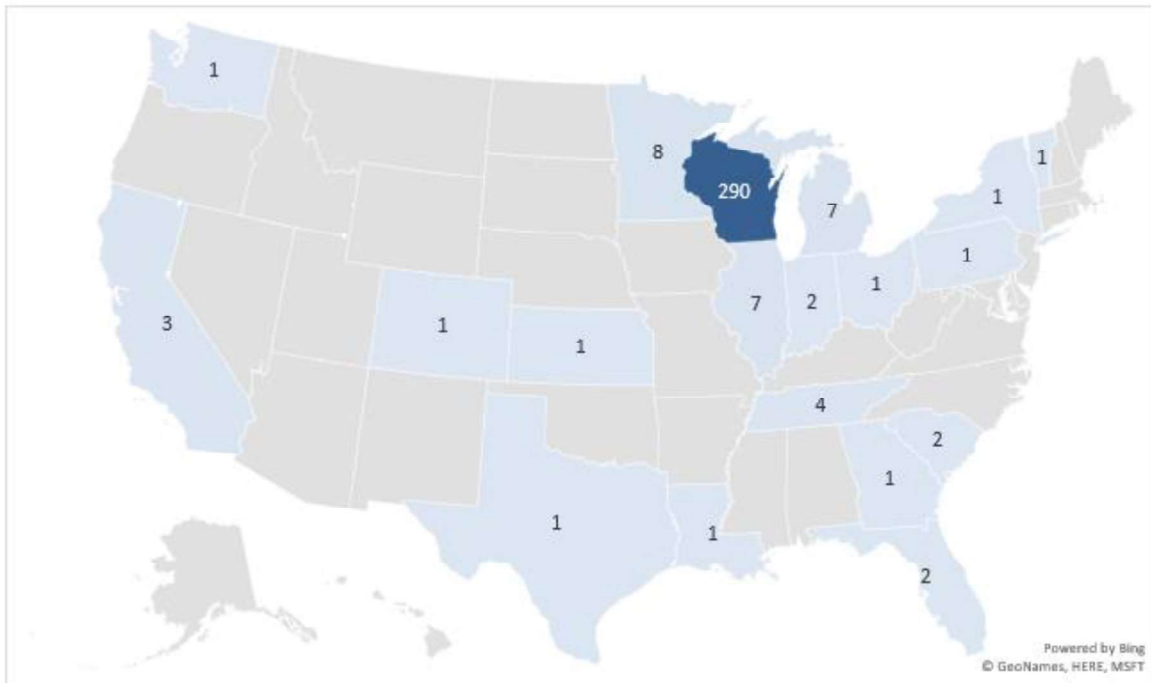
SUBJECT: Background memo relating to FY 2023 Laboratory Accreditation Fee Adjustment

Laboratory Accreditation Program Overview

The Laboratory Accreditation Program is managed by the Certification Services Section within the Bureau of Environmental Analysis & Sustainability. The program sets minimum requirements for the quality and defensibility of environmental laboratory data. Laboratories submitting data to the department's covered programs must be certified or registered under ch. NR 149 to perform the tests generating such data. These data are integral to many of the department's environmental quality rules and regulatory programs.

Certified laboratories perform testing services for hire. Registered laboratories perform testing solely on behalf of their own facility or municipality, or a subsidiary or corporation under common ownership or control.

At the time this proposal was drafted, 335 laboratories located in Wisconsin and 18 other states participate in the program. The department currently certifies 45 out-of-state laboratories.



The Laboratory Accreditation program accredits 335 labs that perform testing of Wisconsin samples, including 45 labs in 18 states other than Wisconsin.

Proposed FY 2023 Revenues

Statutory and Administrative Code Authority

Statute s. 299.11(9) established authorized spending for the Laboratory Accreditation program. Chapter NR 149.21 (1) (c), establishes a fee system to collect revenue equaling expenses to administer the program. The department has and continues to operate this program under the approved spending authority while maintaining a high level of service to its customers.

Program Fee Formula

The fee formula established in s. NR 149.21 (1) (c) uses a relative value system to distribute equitably, among all participating laboratories, the cost of administering the program. The system defines a relative value unit (RVU) as the basis for costs. The relative value of each fee item is specified in s. NR 149.21, Tables 1, 2, and 3.

RVU assignments are based on the complexity of an item or the associated effort in managing the item. Chapter NR 149 assigns RVUs to the matrices or types of samples analyzed by laboratories (aqueous, non-aqueous, or drinking water), the analytical technology laboratories use to analyze aqueous and non-aqueous samples, and the analytical class of compounds laboratories analyze in drinking water.

The cost per RVU is determined by dividing the program's budgeted operating expenses, excluding out-of-state evaluation travel expenses, by the number of available RVUs. The cost of each item is then determined by multiplying the number of RVUs assigned to an item by the cost per RVU.

Projected FY 2023 Expenditures

Salary, Fringe and Position Authority

The FY 2023 salary and fringe expenses total \$552,582 (84%) of the program's budget. The program has position authority for 5.4 full-time equivalent (FTE) positions for FY 2023. Current position assignment is as follows: one FTE position is assigned to a Program Chemist who performs the program's administrative tasks and develops and presents outreach materials for laboratories and data users, 40% of the Certification Services Section Chief position, and four FTE auditors. The auditors perform compliance evaluations of 335 laboratories (audited every three years) directly accredited with the program and provide technical and regulatory support to department staff and the regulated laboratory community.

FY 2023 Budget

The program is submitting a budget of \$656,070 for FY 2023. This figure is \$36,649 (5.9%) more than the program's FY 2022 budget. The significant changes to the budget include funding for a developer to support the Lab Certification database application (+\$13,000) and funding a contract auditor (\$+3,600). The contract auditor is intended to help the program catch up on audits. Many audits have been delayed since March 2020 due to the public health crisis.

Fiscal Year 2023 (July 1, 2022 - June 30, 2023) Budget

Laboratory Accreditation Program

| Expenses | |
|--|----------------------------|
| Budget Item | FY 2023 Budget (\$) |
| Salary and Fringe | |
| FTE Salary (FY22 \$377,425) | 391,902 |
| FTE Fringe (41% - FY22 \$154,744) | 160,680 |
| Subtotal Salary and Fringe (FY22 \$532,169) | 552,582 |
| Supplies and Services | |
| In-State Travel (Lab Audits - FY22 \$25,100) | 25,100 |
| Training and Training Travel (Auditors & Outreach - FY22 \$8,000) | 4,000 |
| Contractor - Lab Auditor (FY22 - \$18,000) | 21,600 |
| Contractor - IT Programmer (FY22 -\$13,000 = 320 hrs) | 26,000 |
| Other supplies (FY22 \$2,000) | 1,700 |
| Total Supplies and Services - not including allocables | 78,400 |
| Allocables (32% - FY22 \$21,152) | 25,088 |
| Subtotal Supplies and Services - including allocables (FY22 \$87,252) | 103,488 |
| Total FY 2023 Budget Expenses (FY22 \$619,421) | 656,070 |

| | |
|----------------------------|---------|
| FY 2023 Spending Authority | 679,300 |
|----------------------------|---------|

| Revenues | |
|---|-------------|
| Budget Item | RVUs |
| LabCert Base Fee RVUs (FY22 \$2345) | 2400 |
| Lab Cert Matrix Fee RVUs (FY22 \$2040) | 2110 |
| LabCert Technology Fee RVUs - AQ (FY22 \$2173) 295 labs | 2437 |
| LabCert Technology Fee RVUs - SO (FY22 \$667) 65 labs | 919 |
| LabCert Technology Fee RVUs - DW (FY22 \$579) 62 labs | 627 |
| LabCert estimated Application Fee RVUs (FY22 \$400) | 255 |
| Total RVUs (FY22 \$8204) | 8748 |

| Annual Fee Schedule = Cost/RVU determination | |
|---|--------------------|
| Total Expenses / Total RVUs = Cost/RVU | 656070/8748 |
| Total Expenses / Total RVUs = Cost/RVU (FY22 \$74.00) | 75.00 |
| Change in RVU fee from last year | -0.50 (0.7%) |
| | |

| | |
|--|---|
| Out of State Lab Travel Costs and Re-imbursements | 0 |
| This cost is a "net-zero" cost to the Dept as all costs are paid by labs | |

Fee Impact on Laboratories and Comparison to Other Accreditation Programs

The proposed Wisconsin laboratory accreditation fees will continue to remain below those of most other states with comparable programs, as illustrated by Figures 2 and 3 below. It should be noted that there are states not represented in the graphs below that assess additional costs for their on-site evaluations, making it difficult to compare certification fees. Laboratories located in Wisconsin are not assessed an on-site evaluation fee by our program. Out-of-state labs in our program are assessed fees to recover all travel expenses other than time.

Figure 2: Fees for a typical municipal WWTP lab

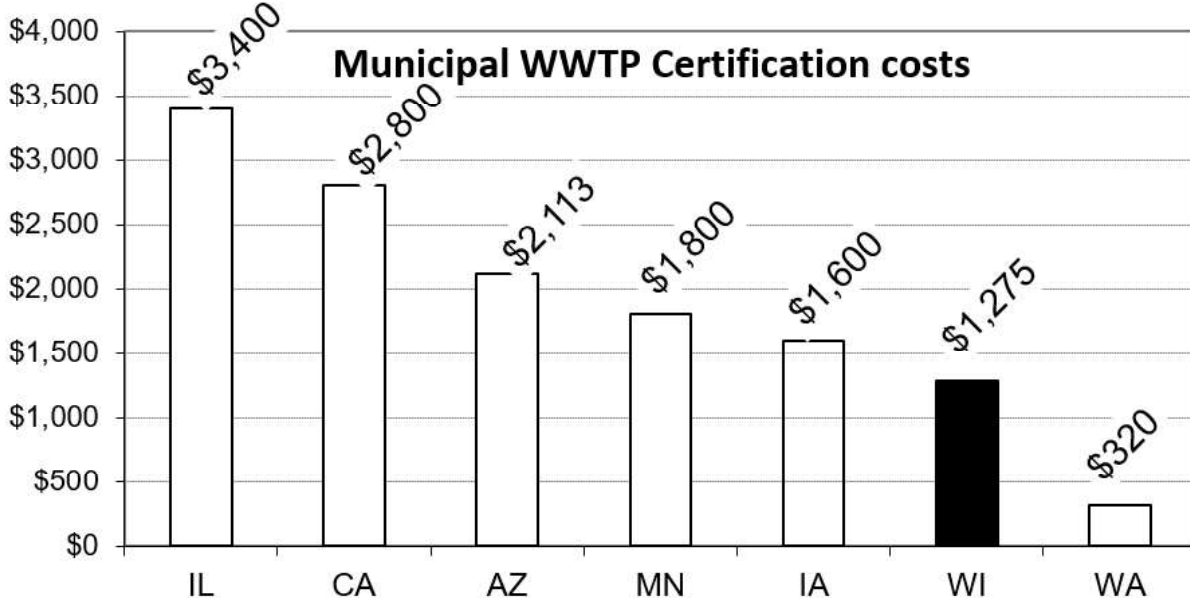
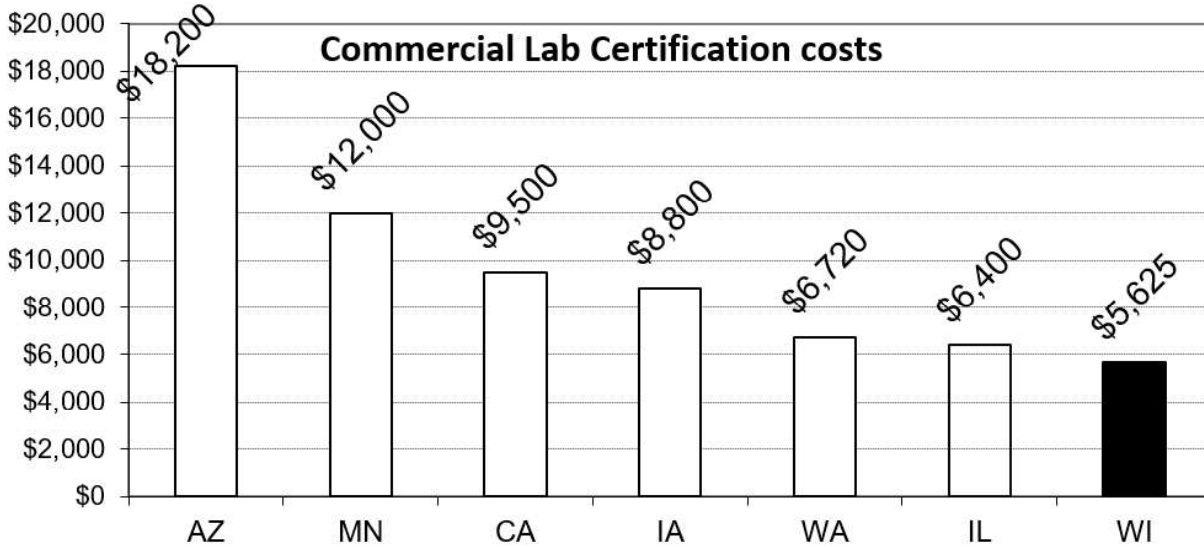


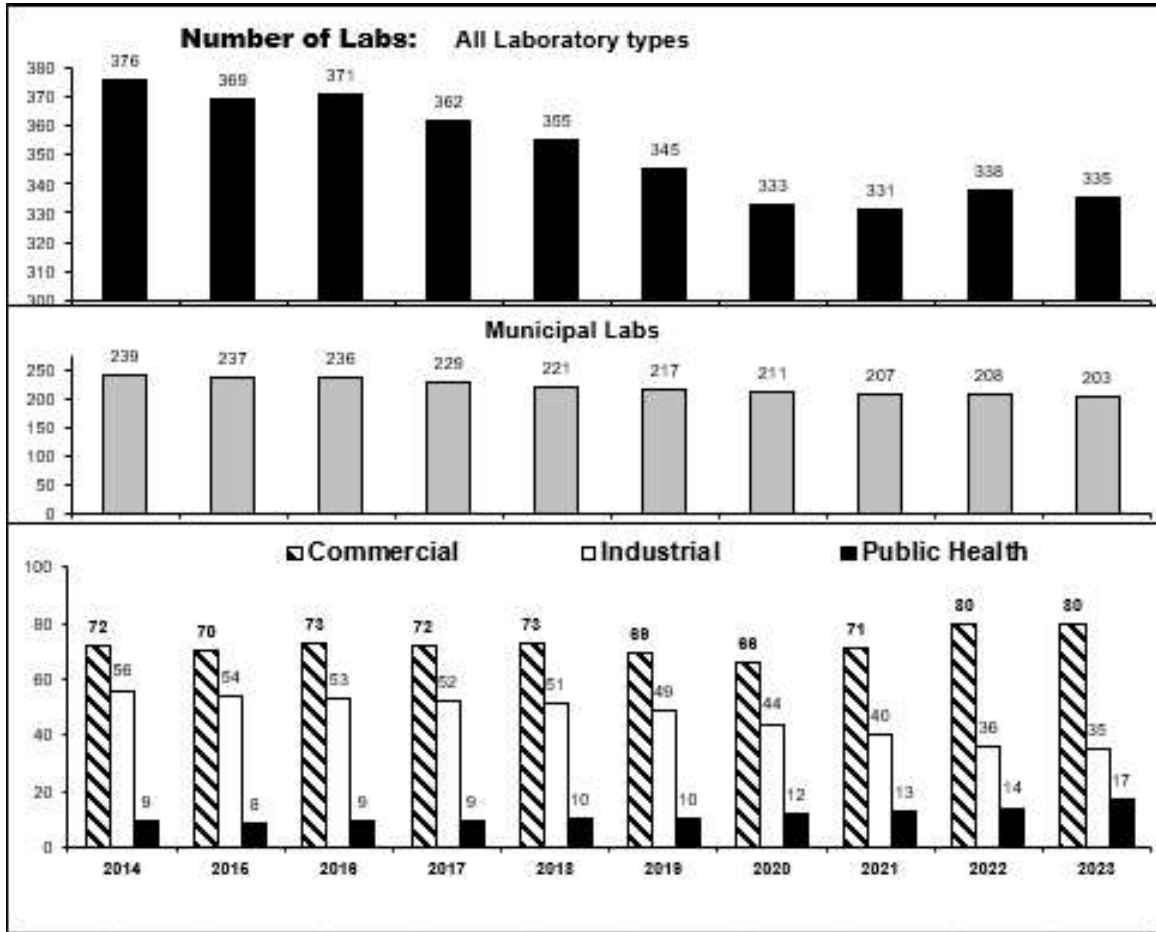
Figure 3: Fees for a typical commercial lab



Laboratory Business Sector Stability

The number of RVUs available for each fiscal year depends on the number of laboratories accredited for each fee item. As Figure 4 illustrates, there will be a net decrease of 3 laboratories participating in the program. The number of overall RVUs increased 6.6% primarily due to removing the fee cap.

Figure 4: Number of Laboratories by Fiscal Year



Public Hearings

This proposal consists of an annual fee adjustment under s. NR 149.21 (1) (b) and does not require a public hearing because the proposal does not involve a rule amendment. A public information meeting to discuss the proposed fee adjustment was held virtually via Zoom on January 25, 2022. All seven of the members of the Certification Standards Review Council attended the meeting.

Environmental Analysis

The recommended board action pertains only to an annual fee adjustment and not a rule amendment. It is therefore a minor action under s. NR 150.20(1m)(j), Wis Admin. Code, and does not require an environmental analysis.

Small Business Regulatory Flexibility Analysis

The proposal does not require a small business flexibility analysis because the requested action does not pertain to rule making. Approximately 20 of the program's 335 laboratories fit the definition of "small business" specified in s. 227.114(1) Stats. These laboratories include small in-state and out-of-state commercial laboratories. The fee formula in s. NR 149.21 (1) (b), is designed to distribute equitably the cost of operating the program across all participating laboratories. Fees cannot be changed for one group of laboratories without affecting the fees assessed to the remaining laboratories.

Certification Standards Review Council

Section 149.21 (1) (b), requires the Certification Standards Review Council to review all annual certification and registration fee adjustments. The council is a nine-member advisory board created under s. 15.107(12), Wis. Stats., to review the standards of the Laboratory Accreditation Program and to provide recommendations for improving program performance. Each member represents an environmental laboratory group of stakeholders. Eight members are appointed by the Department of Administration and one member is appointed by the Chancellor of the University of Wisconsin-Madison. All seven current council members represent regulated laboratories that pay certification or registration fees and were in attendance for the budget presentation.

The council reviewed the program's FY 2023 budget and fee adjustment proposal on January 25th, 2022 and passed unanimously a resolution recommending that the Board approve the proposed adjustment. A copy of the signed resolution is included before the Fiscal Estimate form.

Fiscal Estimate

The required Fiscal Estimate and its accompanying worksheet are included at the end of this background memorandum.

Recommendation for Natural Resources Board Action

The department recommends that the Natural Resources Board approve the program's FY 2023 fee adjustment proposal.

Drafter: Steve Geis, Certification Services

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R09/2016)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

| | |
|--|--|
| <p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p> | <p>2. Date 11/22/2021</p> |
| <p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) NR 149, Laboratory Certification</p> | |
| <p>4. Subject DNR Laboratory Accreditation Program Fees for FY 2023</p> | |
| <p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p> | <p>6. Chapter 20, Stats. Appropriations Affected 20.370 (9)(fj)</p> |
| <p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget</p> | |
| <p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p> | |
| <p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$This budget creates an RVU of \$75.00 which is less than the current RVU of 75.50. The annual fee will be higher for only those 21 laboratories that had their fees previously limited by a cap. Our updated administrative code, NR 149, is now effective and removes the caps that were in place. Municipalities and laboratories that were not affected by fee caps will see a decrease in fees this year under this proposed budget.</p> | |
| <p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | |
| <p>11. Policy Problem Addressed by the Rule Section 299.11(9) Wis. Stats. authorizes promulgating a graduated schedule of fees for participating laboratories to allow the department to recover the costs of administering the Laboratory Accreditation Program. Fees for each fiscal year are determined using the formula specified in s. NR 149.21 (1) (c), Wis. Adm. Code. The formula uses a relative value system to distribute program costs equitably among all certified and registered laboratories. The system assigns each fee item a number of relative value units (RVUs) based on the complexity of managing an item. The cost of an RVU is determined by dividing the amount of fee revenue necessary to fund the program's projected operating costs by the total number of RVUs available for the fiscal year.</p> | |
| <p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. Environmental laboratories: Large and small commercial businesses, wastewater treatment plants, drinking water facilities, industrial laboratories</p> | |
| <p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. Oconomowoc WWTP, Sussex WWTP, Milwaukee Metropolitan Sewage District, Madison Metropolitan Sewage District</p> | |
| <p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The department's operating cost for FY 2022 was \$619,421. On average the cost of compliance for each laboratory in the Laboratory Accreditation Program was approximately \$1,855 (338 labs in total). The program is projecting costs of \$656,070 for FY 2023. This figure represents an increase of \$36,649 (5.9%) from the</p> | |

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ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

expenses budgeted for FY 2022 and remains below the program’s FY 2023 estimated spending authority of \$679,300. Even though the program’s operating cost is expected to increase by 5.9% in FY 2023, our administrative code update removed a fee cap on the laboratories which means that for some laboratories they will see a higher annual cost and for others a lower annual cost. In order for the department to recover the costs (\$656,070) of administering the Laboratory Accreditation Program , the RVU cost is decreased by 0.7% to 75.00 down from 75.50 (with an average of \$1,964 per lab for 335 total labs).

The total compliance cost increase of this program for FY 2023 relative to FY 2022 is estimated to be \$36,649 (+5.9%) from the expenses budgeted for FY 2022 and remains below the program’s FY 2023 estimated spending authority of \$679,300.

This fee adjustment applies only to FY 2023. Fee adjustments are determined annually.

Impact on Municipals:

The WDNR does not anticipate that any of the 203 municipal labs who participate in the laboratory accreditation program will see fee increases.

The WDNR does not anticipate that utility rate payers will be impacted by changes in laboratory certification fees proposed by the agency.

Fiscal Impact & Impact to the State Economy:

We do not anticipate an adverse impact to the state as a result of fee changes. The net fiscal impact to the state will be \$36,649.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
Implementing the 0.7% fee decrease will allow the department to recover the costs of administering the Laboratory Accreditation Program. The stakeholder Certification Standards Review advisory council has approved the fee decrease. Alternatives include reducing expenses, either in the IT category or for our Contract Auditor, resulting in reduced service to the laboratory community and/or not meeting our 3-year audit schedule specified in our Administrative Code, NR 149.

16. Long Range Implications of Implementing the Rule
The budget is evaluated and approved each year by the stakeholder Certification Standards Review advisory council. There are no long range implications as fees can increase or decrease on a yearly basis.

17. Compare With Approaches Being Used by Federal Government
The EPA certifies only the states' primacy drinking water labs, and does not charge a fee.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
The proposed Wisconsin laboratory accreditation fees will continue to remain below those of many other states with comparable programs. WDNR fees for commercial labs are lower than neighboring states. Fees for the average wastewater lab are lower than in Iowa, Minnesota, and Illinois. Michigan's program is not comparable as they offer certification to drinking water labs only.

| | |
|--------------------------------|--|
| 19. Contact Name Steve Geis | 20. Contact Phone Number 608-572-2752 |
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This document can be made available in alternate formats to individuals with disabilities upon request.

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ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

There are 19 commercial laboratories (small businesses) that will see fee increases ranging from \$48 to \$3,175. Only five (5) of these small businesses are located in Wisconsin.

Sixty one (61) commercial laboratories will have a fee decrease. Thirty (30) of these smaller commercial labs are located in Wisconsin.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Fees are calculated according to a formula based on relative value units reflecting work effort to perform an audit.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

None. Fee requirements are specified in statute and code.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

N/A. This is not a rule change.

5. Describe the Rule's Enforcement Provisions

No changes to enforcement.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes
 - No
-

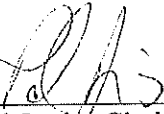
CERTIFICATION STANDARDS REVIEW COUNCIL FY 2023 BUDGET RESOLUTION

Whereas the Laboratory Accreditation Program is required by s. 299.11(9), Wis. Stats., to promulgate by rule a graduated schedule of fees designed to recover the costs of administering the Program, and

Whereas the Certification Standards Review Council is required to by s. NR 149.21 (1) (b), Wis. Adm. Code, to review annual adjustments to this schedule of fees, and

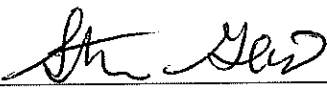
Whereas the Certification Standards Review Council has reviewed the Laboratory Accreditation Program's proposed Fiscal Year 2023 fee adjustment, then

Therefore, be it resolved that the Certification Standards Review Council recommends the Natural Resources Board approve the Laboratory Accreditation Program's proposed Fiscal Year 2023 fee adjustment.



Paul Junip, Chair
Certification Standards Review Council

01/26/22
Date



Steve Geis, Chief
Certification Services Section
Bureau of Environmental Analysis & Sustainability
Department of Natural Resources

2/1/2022
Date